80-1016

No. .....

# In the Supreme Court of the United States

OCTOBER TERM, 1980

BOISE CASCADE CORPORATION,

*Petitioner,*

v.

UNION PACIFIC RAILROAD COMPANY; SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY and UNITED STATES OF AMERICA,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

J. CLARE WILLIAMS,
Counsel of Record

406 West First South
Salt Lake City, Utah 84101

*Attorney for Respondent Railroads*

## QUESTIONS PRESENTED

1. Can the General Right of Way Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. §§ 934-939, be applied to grant a railroad company a right of way for trackage which was constructed prior to its enactment?

2. Can the Secretary of the Interior's decision in 1875 which approved the filings of a railroad company under the Act, authorizing the railroad to obtain a right of way for its trackage, be collaterally attacked in this case 106 years later?

## TABLE OF CONTENTS


*Page*

QUESTIONS PRESENTED ..... *i*

TABLE OF CITATIONS ..... *ii*

STATUTORY PROVISIONS INVOLVED .... 2

STATEMENT OF THE CASE ..... 2

REASON WHY THE WRIT SHOULD NOT BE GRANTED ..... 4

1. THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR GRANTING REVIEW ..... 4

   A. *There is no conflict with prior decisions of this Court or between circuit courts or with a state court of last resort concerning any issue in this case* ..... 4

   B. *There are no important questions of federal law which need to be settled by this court* ..... 5

2. THE DECISION BELOW IS IN ACCORD WITH THE INTENT OF THE ACT AND THIS COURT'S INTERPRETATION OF THE ACT ..... 7

   A. *The Act is to be liberally construed* ..... 7

   B. *Applying the Act retroactively promotes the purposes and intent of the Act* ..... 9

3. THE SECRETARY'S DECISION APPROVING THE GRANT IS CONCLUSIVE ..... 11

CONCLUSION ..... 15

APPENDIX A — STATUTES ..... A-1

# TABLE OF CITATIONS

## *Cases*

*Page*

*Boise Cascade Corp. v. Union Pac. R. Co.*,
630 F.2d 720 ..... 15

*French v. Fyan*, 93 U.S. 169 (1876) ..... 5, 11

*Great Northern Ry. v. Steinke*,
261 U.S. 119 (1922) ..... 7, 8, 9

*Great Northern Ry. v. United States*,
315 U.S. 262 (1941) ..... 5, 7

*Jackman v. Atchison, T. & S.F. R.R.*,
170 P. 1036 (N.M. 1918) ..... 14

*Jamestown & Northern R.R. v. Jones*,
177 U.S. 125 (1900) ..... 4, 5, 6, 9, 10

*McDonald v. United States*,
119 F.2d 821 (9th Cir. 1941) ..... 7

*Minnesota, S.P. & S.Ste. M. R.R. v. Doughty*,
208 U.S. 51 (1908) ..... 5

*Nobel v. Union River Logging R.R.*,
147 U.S. 165 (1893) ..... 5, 6, 13

*Rio Grande Western Ry. Co. v. Stringham*
38 Utah 113, 110 P. 868 (1910), *aff'd* 239
U.S. 44 (1915) ..... 5, 6

*Stalker v. Oregon Short Line R.R.*,
225 U.S. 142 (1912) ..... 5

*Stuart v. Union Pac. R.R.*, 227 U.S. 342 (1913) .... 5

Page

*United States v. Denver & R.G.W. R.R.*, 150 U.S. 1 (1893) ..... 7

*United States v. Southern Pac. Transp. Co.*, 543 F.2d 676 (9th Cir. 1976) ..... 5

*Washington & Idaho R.R. v. Couer D'Alene Ry. & N. Co.*, 160 U.S. 77 (1895) ..... 5

*Statutes*

General Right of Way Act of March 3, 1875 18 Stat. 482, 43 U.S.C. §§ 934-939 .... i, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, A-1, A-2, A-3

Pub. L. 94-579, Title VII, § 706(a), 90 Stat. 2793 ..... 6

*Regulations*

Regulations of February 11, 1904, 32 Land Decisions 481 (1904) ..... 3

Circular of January 13, 1888, Land Decisions 423 (1891) ..... 3

No. .....

# In the Supreme Court of the United States

OCTOBER TERM, 1980

BOISE CASCADE CORPORATION,
*Petitioner,*

v.

UNION PACIFIC RAILROAD COMPANY; SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY and UNITED STATES OF AMERICA,
*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent, Union Pacific Railroad Company and San Pedro, Los Angeles & Salt Lake Railroad Company (hereinafter referred to as "Railroad"), respectfully prays that Petitioner's application for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on July 24, 1980, be denied.

## STATUTORY PROVISIONS INVOLVED

Decisions interpreting application of the General Right of Way Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. §§ 934-939 (hereinafter "Act"), generally cite it as contained in the Statutes at Large of the United States. Accordingly, for the ease and convenience of the Court, the Act is thus set forth herein as Appendix A.

## STATEMENT OF THE CASE

The Railroad adds the following facts and information to Boise Cascade's Statement, in order to provide a more complete and accurate statement of the case:

1. The Railroad's claim of title to a 100 foot right of way on each side of the center line of its track is based upon (a) filing in 1875 with the Secretary of Interior (Secretary) its articles of incorporation and due proofs of its organization; and (b) actual construction of the railroad line over the property in question as of the date the filing was made. The Railroad does not rely on the profile map to establish its rights in the property.

2. The State of Utah patented the property on July 15, 1905, to Boise Cascade's predecessor in interest, "the legal heirs of Hans C. Anderson." The property was conveyed "subject to any easement or right of way of the public to use all such highways as may have been established according to law, over the same or any part thereof" (R. 255).

3. Boise Cascade has made valuable improvements on the land; however, nearly all the improvements were made after the Railroad notified Boise Cascade of its claim of ownership to the property in writing on February 14, 1975. Prior to that time, Boise Cascade had only leveled the ground and installed a drainage ditch. Subsequent to and in spite of receiving the written notice, Boise Cascade proceeded to install more valuable improvements including fencing, office and storage sheds and buildings (R. 258).

4. The Railroad has refused to admit that Boise Cascade's "certified plat" (R. 115) is accurate because it is unable to determine whether the line of railroad as shown on the profile map is more than 100 feet east of where the tracks were actually built. It is impossible to use the map to accurately scale distances from one point to another. The Railroad believes that the map cannot be properly used for such purposes because of its difficult scale (approximately 1½" to the mile)[1], and because the sections are platted as uniform squares which, in reality, is seldom the case.

5. On December 3-4, 1874, the Surveyor General's office in Salt Lake City officially surveyed and platted the area where the subject property is located. The survey notes and the map, dated March 12, 1875 (R. 186), clearly showed the location and existence as

---

[1] Regulations issued by the Secretary subsequent to passage of the Act required the profile map to have a scale of no less than 1 inch to 2,000 square feet. Regulations of February 1, 1904, 32 Land Decisions 481, 486 (1904); Circular of January 13, 1888, 12 Land Decisions 423, 428 (1891).

of December 1874 of the Railroad's already constructed line of railroad as it traversed the west one-half of Section 16, Township 2 South, Range 2 East, Salt Lake Base and Meridian where the property is located. A Railroad track engineer who is a licensed surveyor has testified (R. 182) that he located the notes and map in the Bureau of Land Management office in Salt Lake City, and that the line of railroad as depicted in both the survey notes and on the map is within 10-14 feet of where the tracks are now located.

## REASON WHY THE WRIT SHOULD NOT BE GRANTED

The decision of the Court of Appeals does not warrant review by this Court for the following reasons:

### 1. THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR GRANTING REVIEW.

#### A. *There is no conflict with prior decisions of this Court or between circuit courts or with a state court of last resort concerning any issue in this case.*

The courts below have followed clear lines of well reasoned and long established authority in reaching the decisions from which Boise Cascade has appealed. *Jamestown & Northern R.R. v. Jones,* 177 U.S. 125 (1900), and a number of cases following that de-

cision[2] have clearly established the principle that under the Act filing a profile map is unnecessary where a line has already been constructed.

In *Rio Grande Western Ry. v. Stringham,* 38 Utah 113, 110 P. 868 (1910), *aff'd* 239 U.S. 44 (1915), *rev'd* on another ground in *Great Northern Ry. v. United States,* 315 U.S. 262, 279 (1941), the Utah Supreme Court directly held in a well reasoned decision that the Act should be applied retroactively to an earlier built line of railroad.

*Rio Grande Western Ry., supra,* is based on the rule established in landmark cases[3] that the quasi-judicial decisions of the Secretary of the Interior granting railroads rights of way under the Act are conclusive and not reviewable in collateral proceedings. *Jamestown & Northern Ry., supra,* 177 U.S. at 131, 132, also supports a retroactive interpretation of the Act. Boise Cascade has cited no statutory or case authority contrary to these decisions.

B. *There are no important questions of federal law involved in this case which need to be settled by this Court.*

This case involves a quiet title action concerning approximately 10 acres of ground. Boise Cascade alleges

---

[2] **Stalker v. Oregon Short Line R.R., 225 U.S. 142 (1912); Washington & Idaho R.R. v. Coeur D'Alene Ry. & N. Co., 160 U.S. 77 (1895); Minnesota, S.P. & S.Ste. M. Ry. v. Doughty, 208 U.S. 51 (1908); Stuart v. Union Pac. R.R., 227 U.S. 342 (1913); United States v. Southern Pac. Transp. Co., 543 F.2d 676 (9th Cir. 1976).**

[3] **Noble v. Union River Logging R.R., 147 U.S. 165 (1893); French v. Fyan, 93 U.S. 169 (1876).**

that the value of the realty is $60,000 and the value of the improvements thereon is $200,000 (R. 3). Boise Cascade admits, however, that most of these improvements, including the more valuable ones, were voluntarily made after and in spite of written notice of the Railroad's claim to the property (R. 258).

It is unreasonable for Boise Cascade to claim harm as a result of being misled by an alleged erroneous profile map filed in Washington D.C. in August 1875, when the local United States land office records have reflected the Railroad's actual location over the property since March 1875 (R. 182, 186).

The issues of this case have been previously decided by this Court, except the question of the retroactivity of the Act. The retroactivity issue was correctly decided by the Utah Supreme Court in *Rio Grande Western Ry., supra.* That decision was based upon this Court's holding in *Noble v. Union River Logging R.R., supra,* and is supported by a plain reading of § 1 of the Act and the language of *Jamestown & Northern Ry., supra,* 177 U.S. 131, 132.

The fact that *Rio Grande Western Ry., supra,* is the only decision since passage of the Act (106 years ago) which addresses the retroactivity issue indicates that this question is not of great or widespread public interest or import. Moreover, since the Act was repealed in 1976[4], it is unlikely that the issue involved

[4] Pub. L. 94-579, Title VII, § 706(a), 90 Stat. 2793.

herein will become an "important question of federal law" at any time in the future.

There is no evidence before this Court that the decision below has "clouded the title to land of thousands of private individuals." Neither the Railroad nor Boise Cascade has any idea how many railroad lines constructed prior to 1875 were built without government aid. Boise Cascade's bare allegation that "many hundreds of miles of other railroads" falls into this category is at best speculative and presumptive.

## 2. THE DECISION BELOW FOLLOWS THE INTENT AND THIS COURT'S INTERPRETATION OF THE ACT.

### A. *The Act is to be liberally construed.*

This Court has made it clear that grants under the Act stand on different footing than merely private grants, and should receive from those interpreting and administering it a more liberal interpretation in favor of the purposes for which the Act was passed. *Great Northern Ry. v. United States, supra,* 315 U.S. at 272; *United States v. Denver & R.G.W. R.R.*, 150 U.S. 1, 8 (1893); *Great Northern Ry. v. Steinke*, 216 U.S. 119, 124 (1922). *McDonald v. United States*, 119 F.2d 821 (9th Cir. 1941), clearly states, "The grantee is entitled to have the act liberally construed to effect the purpose for which it was enacted." 119 F.2d at 825 (citation omitted).

The purpose of the Act was to promote the construction and operation of railroads in order to build

the West. As stated in *Great Northern Ry. v. Steinke, supra*:

> Its purpose was to enhance the value and hasten the settlement of the public lands by inviting and encouraging the construction and operation of needed and convenient lines of railroad through them.

261 U.S. at 124.

The Railroad's tracks between Salt Lake City and Juab, Utah were constructed and placed in operation in five different segments—four short segments prior to March 1875, and one long segment after this date. The section to Sandy was finished in September 1871; the section to Lehi Junction was completed in September 1872; the section to Provo in November 1873; the section to York in February 1875; and the section to Juab in June 1879 (R. 238). Treating the entire distance of 102 miles from Salt Lake City to Juab as a single line of railroad, as it eventually became, it is entirely consistent with the intended purposes of Congress to have the Act apply to the entirety of the track rather than just the last portion constructed from York to Juab subsequent to 1875.

As the cases explain, the Act is to be liberally construed to encourage and assist in both the "construction and operation" of railroads in the west. Although construction of the segment in question was completed prior to 1875, operations thereover had just recently begun and substantially more trackage was yet to be built and operated (R. 238) at the time the benefits of the

Act were applied for by the Utah Southern in September 1875. If obtaining the benefits of the Act allowed the Utah Southern to use additional resources to facilitate its operation over the earlier constructed segments of its track and then to continue building and extend such operation a number of miles further south to Juab subsequent to passage of the Act, it would seem that the Secretary properly construed the Act by allowing it to apply to those connected segments which were constructed prior to the Act's passage as well as to those segments constructed after the Act's passage.

No authority cited by Boise Cascade states that the Act was intended to be restrictively and strictly applied only prospectively to "new rail lines" or "new construction." Such an interpretation is not found in the legislative history nor in any of the many cases which have construed and applied the Act. It is found only in Boise Cascade's argument.

B. *Applying the Act retroactively promotes the purposes and intent of the Act.*

Early cases interpreting the Act recognized that the Act was loosely drafted and contained some uncertainty. *Great Northern Ry. v. Steinke*, 261 U.S. 119, 124; *Jamestown & Northern R.R. v. Jones*, 177 U.S. 125, 130. But as stated in *Great Northern Ry.*, 261 U.S. 119, 124, "through a long course of administration in the Land Department and many adjudications in the courts its meaning and effect have come to be pretty well settled."

Section 1 of the Act states, in part:

> That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road.

General Right of Way of March 3, 1875, 18 Stat. 482, 43 U.S.C. § 934. A landmark decision interpreting the meaning and effect of the Act is *Jamestown & Northern R.R., supra,* where the court held that (1) the applicant railroad became a grantee under the Act simply by filing its articles of incorporation and proofs of organization; (2) the granted right of way could be identified and located by actually constructing the line of railroad or, in advance of such construction, by filing a profile map of the line; and (3) no map need be filed at all if construction had already taken place. The case also indicates that by the very language of § 1 of the Act Congress intended it to apply to an already "constructed" railroad line. In so construing the Act, the court said:

> Secretary Vilas said in *Dakota Central R.R. v. Downey*: "As to the roadway, the construction of road fixes the boundaries of the grant, and fixes it by the exact rule of the statute. . . .
>
> "It seems to me that the fourth section of the act was written for another purpose and for another case. It relates to a case of a railroad com-

> pany which desires to secure the present grant, and give to it fixity of location, *before* its road shall be constructed; and it is designed to provide a similar privilege in respect to rights of way which acts granting lands to aid in the construction of railroads have provided—namely, the privilege of giving fixity of location to the subject of the grant *before* construction of the road.
>
> * * *
>
> "It does not become necessary for a road which has secured the benefits of this act, by taking the steps which give it the attitude of being named in the first section as grantee, and by building a road through the public lands, whereby the subject of the grant has been defined, to file a map of definite location in order to entitle it to the benefits of the right of way.
>
> "The fourth section is designed to provide a mode by which fixity of location can be secured to a grantee, *in anticipation* of that construction by which location is defined in the section making the grant, and which shall have the effect, before the construction of the road, which the terms of the grant limit to the 'central line of said road,' which only means—without the fourth section—a *constructed* road."

177 U.S. at 132. Thus, the Act by its very language appears intended to refer to a road which, as of the date of passage of the Act, was already built and in existence.

### 3. THE SECRETARY'S DECISION APPROVING THE GRANT IS CONCLUSIVE.

In *French v. Fyan, supra,* it was held that the action of the Secretary identifying swamp lands, mak-

ing lists thereof and issuing patents therefor, could not be impeached in an action at law by showing that the lands which the patent conveyed were not, in fact, swamp lands, even though the Secretary's jurisdiction extended only to lands of that class. The court explained its holding by quoting from *Johnson v. Towsley*:

> "[T]he general doctrine, that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others. That the action of the land-office in issuing a patent for any of the public lands, subject to sale by pre-emption or otherwise, is conclusive of the legal title, must be admitted under the principle above stated; and in all courts, and in all forms of judicial proceedings where this title must control, either by reason of the limited powers of the court or the essential character of the proceedings, no inquiry can be permitted into the circumstances under which it was obtained."
>
> . . . [W]e are of the opinion that, in this action at law, it would be a departure from sound principle, and contrary to well considered judgments in this court, and in others of high authority, to permit the validity of the patent to the State to be subjected to the test of the verdict of a jury on such oral testimony as might be brought before it. It would be substituting the jury, or the court sitting as a jury, for the tribunal which Congress had provided to determine the question, and would be making a patent of the United States a cheap and unstable reliance as a title for lands which it purported to convey.

93 U.S. at 172 (citation omitted)

To the same effect is *Noble v. Union River Logging R.R., supra,* where this Court said:

> In this class of cases, if the allegation be properly made, and the jurisdiction be found by the Court, such finding is conclusive and binding in every collateral proceeding. And even if the Court be imposed upon by false testimony, its finding can only be impeached in a proceeding instituted directly for that purpose.
>
> The lands over which the right of way was granted were public lands subject to the operation of the statute, and the question whether the plaintiff was entitled to the benefit of the grant was one which it was competent for the Secretary of the Interior to decide, and when decided, and his approval was noted upon the plat, the first section of the act vested the right of way in the railroad company. The language of that section is 'that the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any state or territory,' etc. The uniform rule of this court has been that such an act was a grant *in præsenti* of lands to be thereafter identified. . . . The railroad company became at once vested with the right of property in these lands, of which they can only be deprived by a proceeding taken directly for that purpose. If it were made to appear that the right of way had been obtained by fraud, a bill would doubtless lie by the United States for the cancellation and annulment of an approval thus obtained.

147 U.S. at 176.

It is clear that the Secretary had jurisdiction to consider the Utah Southern's application under the Act.

Accordingly, regardless of whether he correctly exercised such authority, his actions were valid under the law and are not assailable in this proceeding. *Accord, Jackman v. Atchison, T. & S.F. R.R.*, 170 P. 1036, 1042 (N.M. 1918).

It is equally clear from the documents obtained from the General Services Administration, National Archives and Records Service (R. 187), that the Secretary recognized the filings of the Utah Southern as being appropriately submitted pursuant to the Act; he approved and accepted them as being in substantial conformity with the requirements thereof; and by so doing he was clearly and consciously authorizing the Utah Southern to obtain the benefits of the Act for a line of railroad which had already been constructed. That the Secretary was aware that the line had already been constructed[5] is evident by the acknowledgement of the Utah Southern's Chief Engineer on the profile map which the Secretary approved (R. 39). The Engineer stated under oath on the profile map filed with the Secretary that he:

> [L]ocated a line of railroad . . . from Salt Lake City . . . to Payson City . . ., a distance of sixty-five and one half miles, and completed the same

[5] The August 1875 certification of the Territorial Auditor, William Clayton to Utah Southern's Articles of Incorporation filed with the Secretary (R. 217), advising "that the said Railroad Company is fully authorized to proceed with construction of its road," does not show otherwise since this statement can logically be construed to refer to the continued construction of the railroad from York to Juab, Utah which occurred between February 1875 and June 1879 (R. 238).

> the entire distance between the said places on the first day of December A.D. 1874. . . .

Contrary to Boise Cascade's characterization of the Secretary's decision in granting the benefits of the Act "clearly *ultra vires,*" his decision is conclusive as to this collateral proceeding.

## CONCLUSION

In writing the opinion in the decision below, Judge Breitenstein said the Court was "convinced that the 1875 Act applies to determine the rights of the parties." 630 F.2d 720, 723. The Railroad submits that this decision by the Court below is correct, and that Boise Cascade's petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

J. Clare Williams
Counsel of Record

406 West First South
Salt Lake City, Utah 84101

*Attorney for Respondent Railroads*

February 1981

# APPENDIX A

18 Stat. 482. *An Act granting to railroads the right of way through the public lands of the United States.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorportion, and due proofs of its organizaton under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station-buildings, depots, machine-shops, side-tracks, turn-outs, and water-stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

§ 2.

That any railroad company whose right of way, or whose track or road bed upon such right of way, passes through any canyon, pass, or defile, shall not prevent any other railroad company from the use and occupancy of the said canyon, pass, or defile for the purposes of its road in common with the road first located, or the crossing of other railroads at grade. And the location of such right of way through any canyon, pass, or defile

shall not cause the disuse of any wagon or other public highway now located therein, nor prevent the location through the same of any such wagon road or highway where such road or highway may be necessary for the public accommodation; and where any change in the location of such wagon road is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall before entering upon the ground occupied by such wagon road, cause the same to be reconstructed at its own expense in the most favorable location and in as perfect a manner as the original road: Provided, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile.

§ 3.

That the Legislature of the proper Territory may provide for the manner in which private lands and possessory claims on the public lands of the United States may be condemned; and where such provision shall not have been made, such condemnation may be made in accordance with section three of the act entitled "An act [to amend an act entitled an act] to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two, (") approved July second, eighteen hundred and sixty-four.["]

§ 4.

That any railroad company desiring to secure the benefits of this act, shall within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secreary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: Provided, That if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road.

§ 5.

That this act shall not apply to any lands within the limits of any military, park, or Indian reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty-stipulation or by act of Congress heretofore passed.

§ 6.

That Congress hereby reserves the right at any time to alter, amend, or repeal this act, or any part thereof. Approved March 3, 1875.